

DOCKET FILE COPY ORIGINAL

RECEIVED

'APR 15 1993

WJB-TV FT. PIERCE LIMITED PARTNERSHIP FCC - MAIL ROOM  
8423 S. US #1  
Port St. Lucie, FL 34985

KENNETH E. HALL  
General Manager

Area Code 407  
Telephone 871-1688  
Telecopier 871-0155

April 14, 1993

VIA FEDERAL EXPRESS

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

RECEIVED

APR 15 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: MM Docket No: 92-260

Dear Ms. Searcy:

DOCKET FILE COPY ORIGINAL

RECEIVED

APR 15 1993

Before the

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of )

Implementation of the Cable )  
Television Consumer Protection )  
and Competition Act of 1992 )

Cable Home Wiring )  
\_\_\_\_\_ )

NM Docket 92-260 /

**RESPONSE OF WJB-TV LIMITED PARTNERSHIP**

**Kenneth E. Hall  
General Manager  
8423 South U.S. #1  
Port St. Lucie, FL 34985  
(407) 871-1688**

**April 14, 1993**

RECEIVED

APR 15 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Cable	)	MM Docket 92-260
Television Consumer Protection)	)	
and Competition Act of 1992	)	
	)	
Cable Home Wiring	)	
_____	)	

RESPONSE OF WJB-TV LIMITED PARTNERSHIP

WJB-TV Limited Partnership ("WJB"), pursuant to Section 1.106 of the Commission's rules, hereby files this response to the petitions for reconsideration<sup>1</sup> of the Commission's Report and Order in this proceeding (the "Order").

By now, it should be uncontroverted that one of the primary objectives of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") is to promote competition in the video marketplace. See Section 2(b) of the Act. Consistent with that objective, Section 16(d) of the Act required the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such

---

<sup>1</sup> The petitions were filed by the Wireless Cable Association International, Inc. ("WCA"), Liberty Cable Company, Inc. ("Liberty"), and Nynex Telephone Companies ("Nynex").

subscriber." The Order which adopted these rules was released on February 2, 1993.

The Order draws a logical distinction between subscribers in single-family residences and those in multiple dwelling units ("MDUs"). With respect to single-family residences, it recognizes that the homeowner may already have rights to the wiring under various theories of contract and property law. In other cases, it prohibits the operator from removing the wiring upon a voluntary termination of service, unless the operator has first given the subscriber the opportunity to acquire the wiring at replacement cost and the subscriber has declined to do so. Although WJB has some concerns over the implementation of these rules,<sup>2</sup> it applauds the Commission for this position and believes that it is consistent with the Congressional objective of promoting competition in the video marketplace.

On the other hand, WJB is concerned that if the Order is read literally, without regard to Congressional intent, it will adversely affect subscribers in MDUs in a manner that neither the Commission nor Congress anticipated. The ambiguity arises because the Order establishes the "demarcation point" as that point "at (or about) twelve inches outside of where the cable wire enters the outside wall of the subscriber's individual dwelling unit". See

---

<sup>2</sup> WJB agrees with the well-articulated arguments of the WCA that the Commission should take steps to prevent a cable operator from falsely proclaiming an intention to remove wiring from the home of a terminating subscriber simply to prevent an alternative provider from utilizing that wiring during the thirty-day period afforded the cable operator to remove the wiring.

paragraph 12 of the Order. If this sentence is read literally, it might require a subsequent user of the wiring to tear up walls, floors, or other structural features of the MDU in order to gain access to the wiring. Clearly, such a burdensome and destructive requirement is inconsistent with the objective of promoting competition.

In its petition, Liberty has proposed alternative language which WJB believes should be adopted. Specifically, Liberty believes that the demarcation point should be defined as "the point outside the customer's premises and within the common areas of the MDU (e.g., stairwells, hallways, basements, equipment rooms, storage areas, or rooftops) at which the individual subscriber's wires can be detached from the cable operator's common wires without destroying the MDU and without interfering with the cable operator's provision of service to other residents in the MDU". See Liberty Petition at Paragraph 10. In other words, a wire which exclusively serves a particular unit would be treated as belonging to that unit, regardless of its length. For the reasons outlined below, WJB urges the Commission to adopt this proposal as a clarification of the intent of the rule.

Based on its experiences as an alternative video provider, WJB believes that a literal reading of the Order, without regard to Congressional and Commission intent, could create an unworkable situation and result in a MDU resident being denied the option of alternative cable services. In many MDUs, each individual unit is served by a separate wire that extends from a

common point within the building to the unit; the length of the wire depends on the distance between the unit and the common point, but in virtually every instance, it is longer than twelve inches. This lay-out is diagrammed on the attached Exhibits.

Under a literal interpretation of the Order, an alternative provider in one of these MDUs would probably be required to re-wire the entire building. Although it could use that portion of each wire that begins twelve inches outside of the individual units, this option is simply not practical; the small section of available wiring does not reach the common point, and therefore is of little, if any, use to the provider.

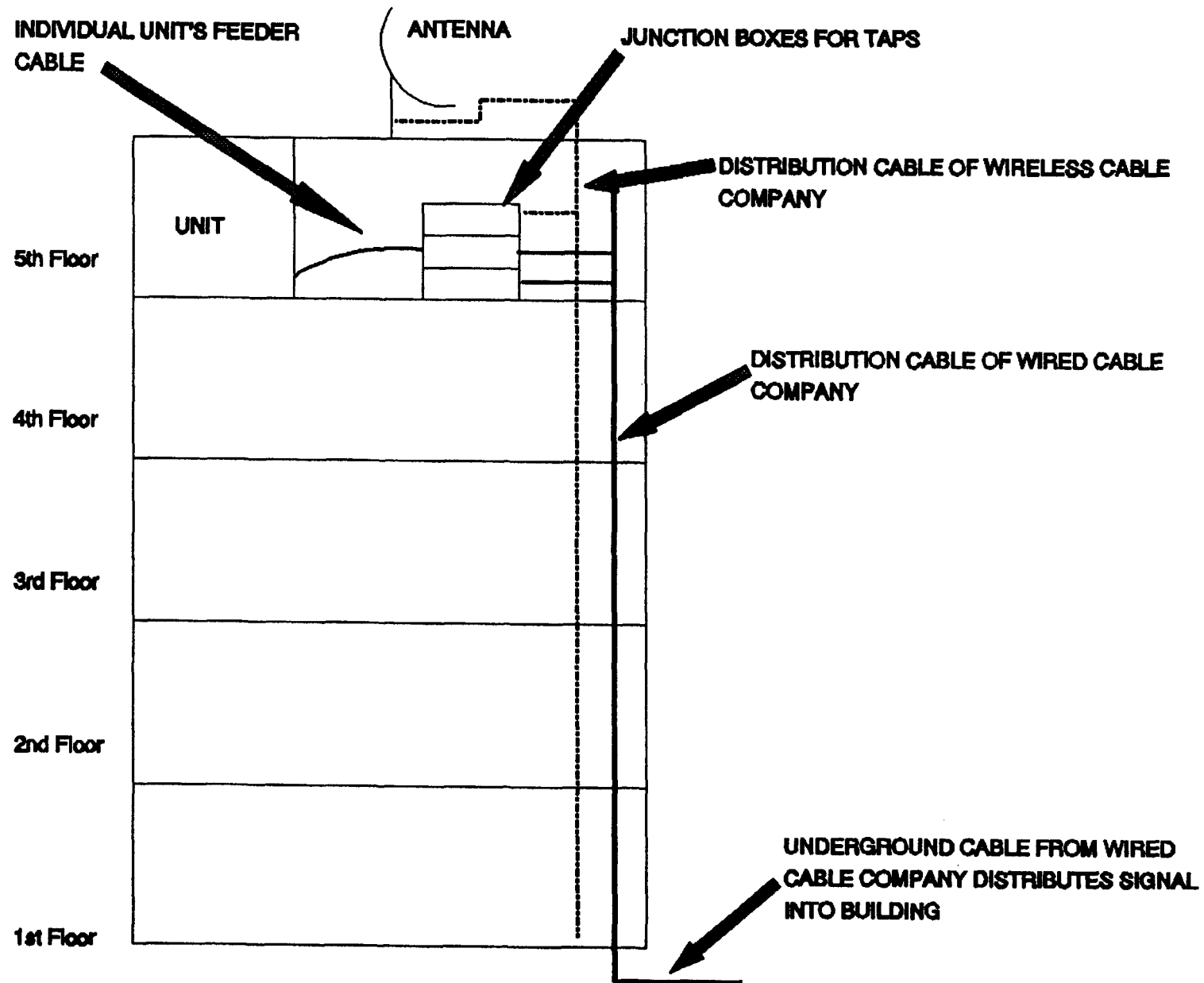
As many commenters, including WJB, have previously pointed out, when an alternative provider must re-wire a building in order to provide service, it is placed at a tremendous competitive disadvantage. Many buildings were wired at construction and the wiring is concealed within walls, under floors, or in other inaccessible areas. To replace or, more specifically, to duplicate that wiring might require destruction of walls and floors and disruption to tenants, a situation that is understandably upsetting to building owners, as well as their

otherwise lay idle. Since the former provider cannot possibly use a wire that is connected only to a unit to which it does not provide service, the proposal should not be objectionable to any party, except those that seek to use the wiring issue as a stumbling block to competition.

For the foregoing reasons, WJB urges the Commission to amend its rules to adopt the clarification proposed above.

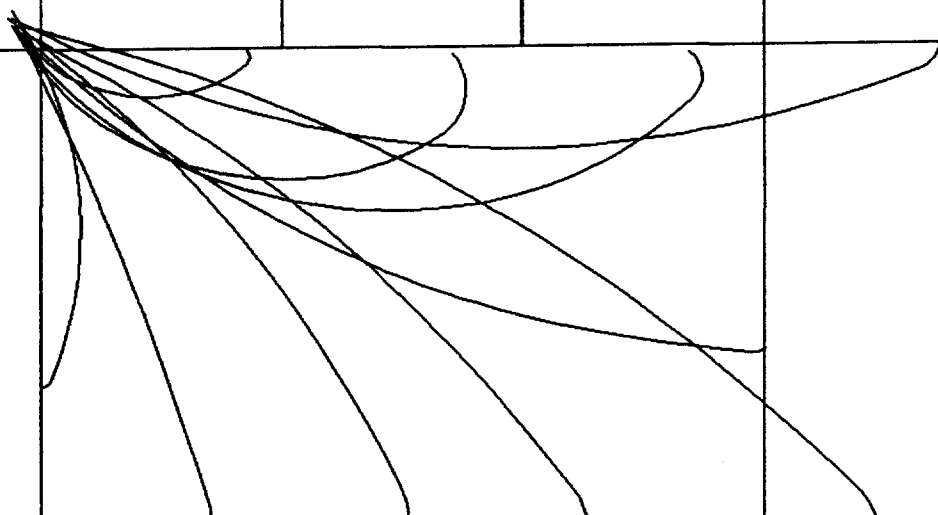
**RESPECTFULLY SUBMITTED** this 14th day of April, 1993.

# EXAMPLES OF TYPICAL WIRING CONFIGURATION FOR MDU SERVED BY ALTERNATIVE CABLE SYSTEMS






Equipment Room



**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing **RESPONSE OF WJB-TV LIMITED PARTNERSHIP** were served on each of the parties listed on the attached Service List, this 14th day of April, 1993, by first class United States mail, postage prepaid.

  
Judy Drake

James E. Meyers  
Baraff, Koerner, Olender  
& Hochberg, P.C.  
5335 Wisconsin Avenue  
Suite 300  
Washington, DC 20015-2003  
Attorneys for Americable  
International, Inc.

William B. Barfield  
Thompson T. Rawls II  
Suite 1800  
1155 Peachtree Street, NW  
Atlanta, GA 30367-6000  
Attorneys for BellSouth  
Corporation and Bell South  
Telecommunications, Inc.

Mr. Ted Coombes  
Senior Legislative Representative  
American Public Power Association  
2301 M Street, NW  
Washington, DC 20037-1484

John I. Davis  
Donna Coleman Gregg  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Alan I. Robbins  
James Baller  
Mary Ann Hammett  
Baller Hammett, P.C.  
1225 Eye Street, NW  
Washington, DC 20005  
Attorneys for American  
Public Power Association

James R. Hobson  
Donelan, Cleary,  
Wood & Maser, P.C.  
1275 K Street NW, Suite 850  
Washington, DC 20005-4078  
Attorneys for Building Industry  
Consulting Service  
International

Stuart F. Feldstein  
Fleischman and Walsh  
1400 Sixteenth Street, NW  
Washington, DC 20036  
Attorney for Arizona Cable  
Television Association

Howard J. Symons  
Keith A. Barritt  
Mintz, Levin, Cohn, Ferris,  
Glovsky and Popeo, P.C.  
701 Pennsylvania Ave., NW,  
Suite 900  
Washington, DC 20004  
Attorneys for Cablevision  
Systems Corporation

Michael E. Glover  
1710 H Street, NW  
Washington, DC 20006  
Attorney for the Bell Atlantic  
Telephone Companies

John P. Cole, Jr.  
Paul Glist  
Cole, Raywid & Braverman  
1919 Pennsylvania Ave. NW  
Suite 200  
Washington, DC 20006

Stephen R. Effros  
James H. Ewalt  
Community Antenna Television  
Association, Inc.  
3950 Chain Bridge Road  
P.O. Box 1005  
Fairfax, VA 22030-1005

Gig B. Sohn  
Andrew Jay Schwartzman  
Media Access Project  
2000 M Street, NW  
Washington, DC 20036

**James L. Casserly**  
**Squire, Sanders & Dempsey**  
**1201 Pennsylvania Avenue, NW**  
**P.O. Box 407**  
**Washington, DC 20044**  
**Attorneys for Consumer Electronics**  
**Group of the Electronic Industries**  
**Assoc.**

**Robert J. Sachs**  
**Howard B. Homonoff**  
**Continental Cablevision, Inc.**  
**Lewis Wharf, Pilot House**  
**Boston, MA 02110**

**W. James MacNaughton, Esq.**  
**90 Woodbridge Center Drive**  
**Suite 610**  
**Woodbridge, NJ 07095**  
**Attorney for Liberty Cable Company**

**Henry M. Rivera, Esq.**  
**Ginsburg, Feldman and Bress**  
**1250 Connecticut Avenue, NW**  
**Suite 800**  
**Washington, DC 20036**  
**Attorneys for Liberty Cable**  
**Company, Inc.**

**Edward W. Hummers, Jr.**  
**Paul J. Feldman**  
**Fletcher, Heald & Hildreth**  
**1225 Connecticut Ave., NW**  
**Washington, DC 20036**  
**Attorneys for Nationwide**  
**Communications, Inc.**

**Eileen E. Huggard**  
**Assistant Commissioner**  
**Cable Television Franchises**  
**and Policy**  
**New York City Department of**  
**Telecommunications and Energy**  
**75 Park Place, Sixth Floor**  
**New York, NY 10007**

**Terry G. Mahn, Esq.**  
**Fish & Richardson**  
**601 Thirteenth, NW**  
**5th Floor North**  
**Washington, DC 20005**  
**Attorneys for Multiplex**  
**Technology, Inc.**

**Norman M. Sinel**  
**Patrick J. Grant**  
**Stephanie M. Phillipps**  
**Arnold & Porter**  
**1200 New Hampshire Avenue, NW**  
**Washington, DC 20036**

**Daniel L. Brenner**  
**Loretta P. Polk**  
**1724 Massachusetts, Ave., NW**  
**Washington, DC 20036**  
**Attorneys for National Cable**  
**Television Association, Inc.**

**Deborah C. Costlow**  
**Thomas C. Power**  
**Winston & Strawn**  
**1400 L Street, NW**  
**Suite 700**  
**Washington, DC 20005**  
**Attorneys for National Private**  
**Cable Assoc. and MaxTel**  
**Cablevision**

**Philip L. Verveer**  
**Sue D. Blumenfeld**  
**Willkie Farr & Gallagher**  
**Three Lafayette Centre**  
**1155 21st Street, NW**  
**Washington, DC 20036-3384**  
**Attorneys for Tele-**  
**Communications, Inc.**

**Martin T. McCue**  
**Vice President and**  
**General Counsel**  
**United States Telephone**  
**Association**  
**900 19th Street, NW, Suite 800**  
**Washington, DC 20006-2105**

**William B. Finneran**  
**The New York State Commission**  
**on Cable Television**  
**Corning Tower Bldg.**  
**Empire State Plaza**  
**Albany, NY 12223**

**Carl Wayne Smith**  
**Chief Regulatory Counsel for**  
**Secretary of Defense**  
**Defense Information Systems Agency**  
**701 S. Courthouse Road**  
**Arlington, VA 22204**

**James P. Tuthill**  
**Nancy C. Woolf**  
**140 New Montgomery St., Rm. 1523**  
**San Francisco, CA 94105**  
**Attorneys for Pacific Bell and**  
**Nevada Bell**

**Rose Helen Perez**  
**Senior Staff Counsel**  
**Times Mirror Cable Television, Inc.**  
**2381-2391 Morse Avenue**

**Jeffrey L. Sheldon**  
**1140 Connecticut Ave, NW**  
**Suite 1140**  
**Washington, DC 20036**  
**Attorney for Utilities**  
**Telecommunications Council**

**Paul J. Sinderbrand**  
**Dawn G. Alexander**  
**Keck, Mahin & Cate**  
**1201 New York Avenue, NW**  
**Penthouse**  
**Washington, DC 20005-3919**  
**Attorneys for Wireless Cable**  
**Association International,**  
**Inc.**

**John H. Muehlstein, Esquire**  
**Pedersen & Houpt**  
**180 North LaSalle, Suite 3400**  
**Chicago, IL 60601**  
**Attorney for WJB-TV Limited**  
**Partnership**

**Deborah Haraldson**  
**Mary McDermott**  
**120 Bloomingdale Road**  
**White Plains, NY 10605**